

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION

3 UNITED STATES OF AMERICA, ) Case No. 1:20-cr-186  
4 ) Youngstown, Ohio  
4 Plaintiff, ) Monday, August 15, 2022  
5 ) 10:17 a.m.  
5 vs. )  
6 )  
6 ETHAN SHIVES, )  
7 )  
7 Defendant. )

8 TRANSCRIPT OF PROCEEDINGS  
9 BEFORE THE HONORABLE CARMEN E. HENDERSON  
10 UNITED STATES MAGISTRATE JUDGE

11 ARRAIGNMENT AND PLEA HEARING  
12 HELD VIA VIDEOCONFERENCE

13 APPEARANCES:

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P R O C E E D I N G S

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THE CLERK: Court calls Case Number 1:20-cr-186-6,  
the United States of America versus Ethan Shives.

The Honorable Carmen E. Henderson is presiding.

THE COURT: Okay. Good morning, everyone. We are  
here today for Mr. Shives' change of plea hearing.

Before we get started, can I have counsel please  
identify themselves for purposes of the record?

MR. SULLIVAN: Good morning, Judge. On behalf of  
the United States, Michael A. Sullivan.

MR. KADISH: Good morning, Your Honor. For the  
record, Craig Kadish, K-a-d-i-s-h, on behalf of Ethan  
Shives.

MR. MILANO: Along with me, Judge, Jay Milano for  
Mr. Shives.

THE COURT: All right. Thank you.

As I stated, we are here today for Mr. Shives'  
plea hearing. Well, actually his arraignment and change of  
plea hearing, I should say.

The purpose of this arraignment, Mr. Shives, is to  
make you aware of [unintelligible] information  
[unintelligible] your constitutional rights.

Mr. Shives, we are in the midst of the COVID-19  
pandemic, and therefore, I am conducting this proceeding by

1 video. I am doing that under the authority provided in the  
2 CARES Act and the standing order issued by the chief judge  
3 of this court pursuant to that act.

4 Additionally, the Federal Rules of Criminal  
5 Procedure, specifically 10(c), allow me to conduct your  
6 arraignment by video with your consent.

7 Mr. Shives, are you able to clearly see and hear  
8 everyone on the video?

9 THE DEFENDANT: Yes, I can see everybody, hear  
10 everybody.

11 THE COURT: All right. Thank you. And will you  
12 please let me know if at any point you cannot clearly see or  
13 hear someone?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. And prior to the hearing,  
16 Mr. Shives, did you speak with your attorney about appearing  
17 by video?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. And I have in front of me,  
20 which we will go over later when we get to the change of  
21 plea hearing part, a form entitled "Consent to Video  
22 Teleconferencing at Change of Plea Hearing" that purports to  
23 be signed by you and your attorney.

24 So based on that, it's my understanding that you  
25 do give permission to proceed by video. Is that correct,

1 Mr. Shives?

2 THE DEFENDANT: Yes.

3 THE COURT: All right. Thank you.

4 I find that the defendant has knowingly and  
5 voluntarily agreed to participate by videoconference.

6 Mr. Shives, you are here regarding a supplemental  
7 information filed against you on July 15, 2022. I am now  
8 going to have the Assistant United States Attorney go over  
9 the charge in that supplemental information.

10 Mr. Sullivan?

11 MR. SULLIVAN: Thank you, Judge.

12 Judge, the supplemental information charges  
13 Mr. Shives with -- Shives with one count of -- it says Count  
14 5 of the indictment altogether, but one count of receipt of  
15 visual depictions of minors engaged in sexually explicit  
16 conduct. It's a violation of 18 U.S. Code Section  
17 2252(a)(2).

18 Did you want me to go through the penalties as  
19 well?

20 THE COURT: Sure.

21 MR. SULLIVAN: So that charge carries potential  
22 penalties of 20 years in prison, with a minimum mandatory  
23 sentence of 5 years, up to lifetime supervised release with  
24 a minimum term of 5 years' supervised release, a \$100  
25 mandatory special assessment, an additional potential of

1 \$5,000 special assessment pursuant to the Victims -- Justice  
2 for Victims of Trafficking Act.

3 THE COURT: All right. Thank you.

4 Mr. Shives, do you waive the reading of the  
5 indictment or would you like the indictment -- or sorry,  
6 supplemental information or would you like the information  
7 read?

8 THE DEFENDANT: I will waive it.

9 THE COURT: All right. Thank you.

10 And, Mr. Shives, are you a citizen of the United  
11 States?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Thank you.

14 Next I want to advise you of your right to an  
15 attorney. You have the right to be represented by counsel  
16 at every stage of these proceedings. You have the right to  
17 retain the counsel of your choosing. However, if you  
18 couldn't afford counsel, the court would appoint counsel to  
19 represent you.

20 Do you understand your right to counsel?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. And it's my understanding  
23 you have retained Mr. Kadish and Mr. Milano to represent you  
24 in this matter, and they are here to represent you today.

25 Is that correct, Mr. Shives?

1 THE DEFENDANT: Yes.

2 THE COURT: All right. Thank you.

3 Additionally, you have the right to remain silent.  
4 You are not required to make a statement. Anything you say  
5 can be used against you. If you start to make a statement,  
6 you may stop at any time. You may also consult with your  
7 counsel at any time.

8 Do you understand your right to remain silent?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Thank you.

11 Pursuant to the Due Process Protections Act, the  
12 court reminds the government of its obligations under *Brady*  
13 to disclose evidence favorable to defendant and material to  
14 the defendant's guilt or punishment.

15 The government is ordered to comply with *Brady* and  
16 its progeny. The failure to do so in a timely manner may  
17 result in consequences, including dismissal of the  
18 indictment or information, exclusion of government evidence  
19 or witnesses, adverse jury instructions, dismissal of  
20 charges, contempt proceedings, sanctions by the court, or  
21 any other remedy that is just under the circumstances.

22 All right. Is it going to be Mr. Kadish or  
23 Mr. Milano who I should be directing my questions to today?

24 MR. KADISH: You can address me, Your Honor, if  
25 that suits you.

1 THE COURT: That's fine.

2 All right. So it's my understanding that your  
3 client, Mr. Shives, intends to plead guilty to Count 5 of  
4 the supplemental information.

5 Is that correct?

6 MR. KADISH: That is correct.

7 THE COURT: All right. Thank you.

8 All right. In order for us to go ahead and do  
9 that, there are a couple of things that I need to do today  
10 in order for us to do that, Mr. Shives.

11 First, I note that you either talked about -- you  
12 filled out this consent to -- what is it -- consent to video  
13 teleconferencing at the change of plea hearing.

14 And did you discuss this form with your attorney  
15 prior to signing it, Mr. Shives?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. And you agree, as I  
18 stated, to proceed by videoconference?

19 THE DEFENDANT: Yes.

20 THE COURT: All right. Thank you.

21 In accordance with the standing order of this  
22 court, the court finds that the defendant, Mr. Shives, has  
23 consented to video teleconferencing to conduct his change of  
24 plea hearing today after consultation with counsel.

25 This court further finds that this proceeding



1 cannot be further delayed without serious harm to the  
2 interests of justice. Due to the COVID-19 pandemic, the  
3 court is faced with a backlog of criminal cases.

4 The indictment for this particular case was filed  
5 on March 12th, 2020. A warrant was subsequently issued.  
6 Mr. Shives was arrested in the District of Maryland on July  
7 15th, 2020, and arraigned in the Northern District of Ohio  
8 on August 31st, 2020.

9 This is a supplemental information in this case.  
10 It was filed on July 15th, 2022. And the defendant has  
11 notified the court that he wishes to plead by video  
12 teleconferencing for many reasons to proceed with this case,  
13 and also to avoid quarantine from in-person hearing.

14 Based on that, the court finds the hearing will be  
15 conducted by video teleconferencing today.

16 In addition to that form that we needed to go  
17 over, Mr. Shives, I also need to go over with you consent to  
18 order of referral for purposes of your hearing to a  
19 magistrate judge. This form also purports to be signed by  
20 you and your attorney, as well as the attorney for the  
21 government.

22 Mr. Shives, did you go over this form with your  
23 attorney prior to signing it?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. And, Mr. Shives, do you

1 understand that you have the right to offer your guilty plea  
2 to the district judge in this case?

3 THE DEFENDANT: Yes.

4 THE COURT: And do you understand that by giving  
5 consent to my jurisdiction, you are giving up your right to  
6 offer your plea to the district judge?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. Thank you.

9 Understanding all that, do you still wish to offer  
10 your plea before me, Mr. Shives?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. Thank you.

13 The consent is accepted and we will proceed with  
14 Mr. Shives' change of plea hearing.

15 All right. During this hearing, Mr. Shives, I am  
16 going to have to ask you a number of questions. And I am  
17 going to be going over your constitutional rights with you.

18 If at any time you have any questions about what  
19 I'm asking you, will you please let me know? Also, if you  
20 have a question that you need to speak with your attorneys  
21 about, will you please let me know?

22 THE DEFENDANT: [Inaudible].

23 THE COURT: All right. And before we proceed, I  
24 want to remind you that you have a constitutional right to  
25 plead not guilty. Even though you have expressed intent to

1 plead guilty, you have a right to change your mind and to  
2 plead not guilty at any time before I accept your plea,  
3 which will be at the end of this hearing.

4 Do you understand that, Mr. Shives?

5 THE DEFENDANT: Yes.

6 THE COURT: All right. One other form that I need  
7 to go over, it's called a waiver of indictment. This form  
8 also, Mr. Shives, purports to be signed by you and signed by  
9 your attorney.

10 Do you understand that the government can only  
11 proceed against you by an information with your consent in  
12 writing?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. And do you understand that  
15 if you waive indictment by the grand jury, the case will  
16 proceed by criminal information as if you have been  
17 indicted?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. And did you discuss  
20 waiving your right to indictment with your attorney prior to  
21 signing this form?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. And has anyone made any  
24 threats or promises to you to induce you to waive  
25 indictment, besides what's in the plea agreement, I guess I

1       should say?

2               THE DEFENDANT:   [Inaudible].

3               THE COURT:   All right.   So having been advised of  
4       your rights, Mr. Shives, do you still wish to waive your  
5       right to indictment and have the case proceed against you by  
6       information?

7               THE DEFENDANT:   Yes.

8               THE COURT:   Okay.   Thank you.

9               The waiver of indictment is accepted.   And the  
10       court finds that it was knowingly and voluntarily made.

11               All right.   Now I indicate that we are going to go  
12       through a lot of questions.   As we continue with this  
13       proceeding, Mr. Shives, I want to remind you that you also  
14       have your right to remain silent.   You are not required to  
15       make a statement against yourself.   Before receiving your  
16       guilty plea, I am going to ask you questions to assure that  
17       your plea is valid.   And by answering those questions, you  
18       are going to make statements against your own interest and  
19       you will incriminate yourself.

20               Do you understand that by proceeding with your  
21       guilty plea today, you're giving up your right to remain  
22       silent?

23               THE DEFENDANT:   Yes.

24               THE COURT:   All right.   Thank you.

25               I am going to place you under oath.   Mr. Shives,

1 can you please raise your right hand?

2 (Defendant sworn.)

3 THE COURT: All right. Thank you. You may put  
4 your hand down.

5 Mr. Shives, you have now been sworn and you are  
6 under oath to tell the truth. Your answers to my questions  
7 will be subject to the penalty of perjury if you do not tell  
8 the truth.

9 Do you understand that?

10 THE DEFENDANT: [Inaudible].

11 THE COURT: All right. As I stated, one of the  
12 first things I need to do is establish that you are  
13 competent to plead guilty. To do that, I am going to start  
14 by asking you some background questions.

15 Can you please tell me your full name?

16 THE DEFENDANT: Ethan Andrew Shives.

17 THE COURT: And can you tell me your age?

18 THE DEFENDANT: Thirty-two.

19 THE COURT: And are you a citizen of the United  
20 States, Mr. Shives?

21 THE DEFENDANT: Yes.

22 THE COURT: And how far did you go in school?

23 THE DEFENDANT: I went to community college.

24 THE COURT: Okay. And are you currently on  
25 probation, parole or supervised release for any state or

1 federal conviction?

2 THE DEFENDANT: No.

3 THE COURT: And have you been treated in the last  
4 12 months for any mental illness, addiction to alcohol or  
5 addiction to narcotic drugs?

6 THE DEFENDANT: No.

7 THE COURT: In the past 24 hours, have you taken  
8 any medication, drugs or consumed any alcohol?

9 THE DEFENDANT: [Inaudible].

10 THE COURT: Do you understand what's happening  
11 here today, Mr. Shives?

12 THE DEFENDANT: Yes.

13 THE COURT: And what is that?

14 THE DEFENDANT: A change of plea hearing.

15 THE COURT: Okay. All right. Mr. Kadish, do you  
16 have any doubts regarding Mr. Shives' ability to understand  
17 what's happening here today and the consequences of his  
18 guilty plea?

19 MR. KADISH: I have none.

20 THE COURT: Mr. Sullivan, same question?

21 MR. SULLIVAN: Same answer, Judge, no concerns.  
22 Thank you.

23 THE COURT: All right. Thank you.

24 All right. Mr. Shives, again, I want to remind  
25 you you are going to be giving up many constitutional rights

1 today. However, you will continue to have your right to  
2 representation at each stage of the proceedings throughout  
3 this case. If at any point you couldn't afford counsel, the  
4 court would appoint counsel to represent you.

5 You are represented here today by Mr. Kadish and  
6 Mr. Milano. Have you had enough time to discuss with them  
7 the charges made against you and your response to those  
8 charges?

9 THE DEFENDANT: [Inaudible].

10 THE COURT: Have you told them everything you know  
11 about this case?

12 THE DEFENDANT: Yes.

13 THE COURT: Have you discussed your plea agreement  
14 with them and the consequences of pleading guilty?

15 THE DEFENDANT: Yes.

16 THE COURT: Are you completely satisfied with  
17 their representation of you?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. As I stated, Mr. Shives,  
20 now that we have established that you are competent, there  
21 also are several constitutional rights that you are giving  
22 up by proceeding with your guilty plea today. These are  
23 summarized in paragraph 1 of your plea agreement, but I want  
24 to go over them in some more detail.

25 The first is the right to a jury trial. You have

1 the right to stand by your trial -- your -- sorry, stand by  
2 your plea of not guilty and to require the government to  
3 proceed to trial. You have the right to a trial by jury or  
4 a bench trial with the government's permission, including  
5 the assistance of counsel at trial.

6 At this trial, you would be presumed innocent.  
7 The government would be required to prove you guilty by  
8 competent evidence beyond a reasonable doubt as to each  
9 element of the offenses that you are charged with. You  
10 would not have to prove that you are innocent.

11 Do you understand those rights, Mr. Shives?

12 THE DEFENDANT: Yes.

13 THE COURT: And do you understand that by pleading  
14 guilty, you are giving up those rights?

15 THE DEFENDANT: [Inaudible].

16 THE COURT: All right. You also have the right to  
17 compulsory process. That means at trial, you have the right  
18 to the issuance of subpoenas to require the attendance of  
19 witnesses to testify in your defense.

20 Do you understand that right?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that by pleading  
23 guilty, you are giving up that right?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. You also have the right to



1 confront witnesses. That means at trial you have the right  
2 to see, hear, cross-examine all the witnesses that the  
3 United States would present against you.

4 Do you understand that right?

5 THE DEFENDANT: Yes.

6 THE COURT: And do you understand that by  
7 proceeding with your guilty plea, you are giving up that  
8 right?

9 THE DEFENDANT: [Inaudible].

10 THE COURT: All right. You also have the right to  
11 remain silent. That means at trial, while you would have  
12 the right to testify if you chose to do so, you would also  
13 have the right not to testify, and no inference or  
14 suggestion of guilt could be drawn from the fact that you  
15 did not testify.

16 Do you understand that right?

17 THE DEFENDANT: Yes.

18 THE COURT: And do you understand by proceeding  
19 with your guilty plea, you are giving up that right?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. You also have the right  
22 against self-incrimination. That means if you proceed with  
23 your guilty plea today, as I -- as I stated earlier, you  
24 will be giving up your right not to incriminate yourself.  
25 Shortly, I'm going to ask you questions about what you did

1 to satisfy myself that you are guilty as charged. In order  
2 for you to plead guilty, you will have to acknowledge your  
3 guilt to make a valid plea.

4 Do you understand your right not to incriminate  
5 yourself?

6 THE DEFENDANT: Yes.

7 THE COURT: And do you understand that by  
8 proceeding here today, you are giving up that right?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. To summarize, Mr. Shives,  
11 if you plead guilty and the district judge accepts your  
12 plea, you will give up all of the rights that I have just  
13 discussed, there will not be a trial, the district judge  
14 will enter a judgment of guilty and sentence you on the  
15 basis of your guilty plea after considering the presentence  
16 report.

17 Do you understand all of that?

18 THE DEFENDANT: Yes.

19 THE COURT: And do you also understand that the  
20 offense that you are pleading guilty to is a felony offense,  
21 and that a judgment of guilty may deprive you of certain  
22 valuable civil rights, such as the right to vote, the right  
23 to hold public office, the right to serve on a jury and the  
24 right to possess a firearm?

25 THE DEFENDANT: Yes.

1 THE COURT: And do you also understand,  
2 Mr. Shives, that if you proceed with your guilty plea and  
3 the district judge accepts your plea, there are very limited  
4 circumstances under which your plea may be withdrawn?

5 THE DEFENDANT: Yes.

6 THE COURT: All right. Thank you.

7 All right. Mr. Shives, do you have a copy of the  
8 information?

9 THE DEFENDANT: Not with me.

10 THE COURT: Okay. But you've gone over it with  
11 your attorney and we just went over it in the arraignment  
12 portion too; is that correct, Mr. Shives?

13 THE DEFENDANT: [Inaudible].

14 THE COURT: I didn't hear you.

15 THE DEFENDANT: Yes. We went over it, yes.

16 THE COURT: Thank you.

17 All right. I'm now going to have the Assistant  
18 United States Attorney go over the charge in the  
19 supplemental information again. Mr. Sullivan, not the  
20 penalties, just the charge is enough.

21 MR. SULLIVAN: All right. Thank you, Judge.

22 Judge, the charge charges Mr. Shives with one  
23 count of receipt of visual depictions of minors engaged in  
24 sexually explicit conduct, and that is a violation of 18  
25 United States Code Section 2252(a)(2).

1           THE COURT: All right. Mr. Shives, have you  
2 discussed with your attorney this charge in Count 5 of the  
3 supplemental information that you are intending to plead  
4 guilty to?

5           THE DEFENDANT: [Inaudible].

6           THE COURT: It went out. I didn't hear you.

7           THE DEFENDANT: Yes, I am.

8           THE COURT: And do you understand that charge?

9           THE DEFENDANT: Yes.

10          THE COURT: All right. I'm now going to have  
11 Mr. Sullivan go over the elements for that offense. This is  
12 also found in paragraph 12 of your plea agreement.

13          MR. SULLIVAN: The elements are as follows, Judge:  
14 First, that the defendant knowingly received a visual  
15 depiction;

16                Second, that such visual depiction was shipped or  
17 transported in interstate or foreign commerce by any means,  
18 including by computer;

19                Third, that the production of such visual  
20 depiction involved the use of a real minor engaging in  
21 sexually explicit conduct;

22                Fourth, that such visual depiction is of a minor  
23 engaging in sexually explicit conduct;

24                And fifth, that the defendant knew that the  
25 individual in such visual depiction was a minor and used the

1 visual depiction was of such minor engaged in sexually  
2 explicit conduct.

3 THE COURT: Mr. Kadish, do you agree with the  
4 elephants -- "elephants" -- with the elements that  
5 Mr. Sullivan has just stated?

6 MR. KADISH: Yes, and those elements were reviewed  
7 with Mr. Shives on July 1st, as evidenced by his initials on  
8 what is, I believe, page 3 of the plea agreement.

9 THE COURT: All right. Thank you.

10 MR. KADISH: Page 4. 3 and 4.

11 THE COURT: Thank you.

12 And, Mr. Shives, do you understand the elements?

13 THE DEFENDANT: [Inaudible].

14 THE COURT: I think your audio is going out  
15 intermittently, Mr. Shives, so I didn't hear you.

16 Do you understand the elements?

17 MR. KADISH: Ethan, can you speak up?

18 THE DEFENDANT: I do. I said yes.

19 THE COURT: Okay. Thank you.

20 All right. I'm now going to have Mr. Sullivan go  
21 over the penalties associated with that offense. Those are  
22 also found in paragraph 2 of your plea agreement,  
23 Mr. Shives.

24 Mr. Sullivan?

25 MR. SULLIVAN: Thank you, Judge.

1           The penalties are as follows: Maximum  
2       imprisonment of 20 years, minimum mandatory term of 5 years'  
3       imprisonment, maximum statutory fine of \$250,000, maximum  
4       term of supervised release of life, with a minimum term of  
5       supervised release being 5 years, a \$100 mandatory special  
6       assessment, and a \$5,000 additional special assessment  
7       pursuant to the Victims -- Justice for Victims of  
8       Trafficking Act.

9           THE COURT: All right. Thank you.

10          Mr. Shives, do you understand, which is also  
11       stated in paragraph 3 of your plea agreement, that by  
12       pleading to this charge, that it cannot be satisfied by a  
13       term of probation, but, in fact, it must be satisfied from a  
14       period of incarceration that must be at least five years?

15          THE DEFENDANT: Yes.

16          THE COURT: All right. And do you also understand  
17       that in addition to the \$100 special assessment, you will be  
18       ordered to pay a \$5,000 amount pursuant to the Justice for  
19       Victims of Trafficking Act?

20          THE DEFENDANT: Yes.

21          THE COURT: All right. Thank you.

22          Do you also understand that the court may order  
23       you to pay the costs of prosecution and sentence, including,  
24       but not limited to, imprisonment, community confinement,  
25       home detention and supervised release?

1 THE DEFENDANT: [Inaudible].

2 THE COURT: All right. And to the extent that any  
3 type of additional restitution is applicable in this case,  
4 do you understand that the court may order you to pay  
5 restitution?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. Mr. Shives, your decision  
8 to plead guilty here today is the result of the exercise of  
9 your own free will?

10 THE DEFENDANT: Yes.

11 THE COURT: Has anyone threatened you or  
12 threatened anyone else or forced you in any way to plead  
13 guilty?

14 THE DEFENDANT: No.

15 THE COURT: All right. We have been talking about  
16 some provisions in this plea agreement between you and the  
17 government. Mr. Shives, I'm now looking at the final page  
18 of this plea agreement, which purports to be page 10. On  
19 that page, it has your signature, the signature of your  
20 attorney and the signature of the government's attorney.

21 Did you read over this plea agreement in its  
22 entirety with your attorneys prior to signing it,  
23 Mr. Shives?

24 THE DEFENDANT: Yes.

25 THE COURT: Did you have an opportunity to discuss

1 it with them and ask any questions you might have had about  
2 this plea agreement?

3 THE DEFENDANT: Yes.

4 THE COURT: On each page, Mr. Shives, it also has  
5 the initials ES. Did you put those initials there?

6 THE DEFENDANT: Yes.

7 THE COURT: And did you read each of those pages  
8 before putting your initials on it?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Do you understand the  
11 terms of this plea agreement, Mr. Shives?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you have any questions about this  
14 plea agreement?

15 THE DEFENDANT: No.

16 THE COURT: All right. Regarding this plea  
17 agreement, Mr. Shives, looking to paragraph 10 and 11. Do  
18 you understand that with this plea agreement, you are  
19 agreeing to plead to Count 5 of the supplemental information  
20 in this case?

21 THE DEFENDANT: Yes.

22 THE COURT: And do you understand that upon  
23 sentencing, the government is agreeing to move to dismiss  
24 the charges in Counts 1, 2, 3 and 4 in the indictment?

25 THE DEFENDANT: Yes.



1           THE COURT: Has anyone, including your attorney,  
2 the attorney for the government, or the court made any  
3 promise to you other than those contained in this plea  
4 agreement, Mr. Shives?

5           THE DEFENDANT: No.

6           THE COURT: All right. Thank you.

7           All right. Mr. Shives, I want to direct your  
8 attention to paragraph 19 of your plea agreement. This plea  
9 agreement -- this part of the plea agreement goes over the  
10 waiver of your appeal and post-conviction rights.

11           Do you understand that you cannot appeal your  
12 sentence except under the limited circumstances listed in  
13 that paragraph?

14           THE DEFENDANT: Yes.

15           THE COURT: Do you also understand that you cannot  
16 contest your sentence by any post-conviction proceedings  
17 except under the limited circumstances listed in that  
18 paragraph?

19           THE DEFENDANT: Yes.

20           THE COURT: And do you understand that in some  
21 circumstances, the government may have the right to appeal  
22 the sentence imposed?

23           THE DEFENDANT: Yes.

24           THE COURT: All right. And have you had an  
25 opportunity to discuss with your attorney how the sentencing

1 guidelines might apply to your case?

2 THE DEFENDANT: Yes.

3 THE COURT: Mr. Sullivan?

4 MR. SULLIVAN: Yes, Judge.

5 THE COURT: Is there supposedly no sentencing  
6 table?

7 MR. SULLIVAN: There is not. There is no  
8 agreement in this plea agreement about the sentencing  
9 guidelines calculation.

10 THE COURT: Oh, okay. Okay. Perfect. Thank you.

11 All right. So, Mr. Shives, have you talked to  
12 your attorneys about how the guidelines might apply,  
13 although it's not in the plea agreement?

14 THE DEFENDANT: [Inaudible].

15 THE COURT: I didn't hear you, Mr. Shives.

16 THE DEFENDANT: Yes.

17 THE COURT: All right. Thank you.

18 Mr. Kadish, can you please tell me, what is the  
19 estimate of the offense level that you have given to  
20 Mr. Shives?

21 MR. KADISH: I was not anticipating having you ask  
22 me that. Can I have your indulgence for a moment?

23 THE COURT: No problem. Mr. [Unintelligible],  
24 what is your estimate?

25 MR. MILANO: I'm sorry, Judge, were you talking to

1 me?

2 THE COURT: Yes, uh-huh.

3 MR. MILANO: I'm going to give you the same answer  
4 as Mr. Kadish.

5 MR. KADISH: If I could, I only have a portion of  
6 Mr. Shives' file in front of me. May I step away for a  
7 moment, Your Honor?

8 THE COURT: No problem. Go ahead.

9 (Pause.)

10 MR. KADISH: Oh, actually I have them online, Your  
11 Honor.

12 THE COURT: No problem.

13 MR. SULLIVAN: I think I -- I think I have him at  
14 a 33 before acceptance.

15 MR. KADISH: Yeah, I don't think we were that  
16 high.

17 THE COURT: I figured it would be different.

18 And then, Mr. Sullivan, what is your estimate of  
19 the criminal history category?

20 MR. SULLIVAN: I believe he would be a I.

21 MR. KADISH: I would agree with -- I would agree  
22 with that, Your Honor. I think we all agree he's Criminal  
23 History Category Number I.

24 THE COURT: All right. So, Mr. Shives, first  
25 looking at the government's estimate, the government

1 estimates that your offense level is a 33. With three  
2 levels of acceptance, that puts you down to a 30. And if  
3 you were a Criminal History Category I, that would put you  
4 at 97 to 121 months on the guidelines.

5 Do you understand that, Mr. Shives?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. Thank you.

8 And --

9 MR. KADISH: Your Honor, in response to your  
10 question --

11 THE COURT: Uh-huh.

12 MR. KADISH: -- depending on the variety of  
13 enhancement, and obviously that's the meat of this, we have  
14 had an adjusted guidelines level of, I believe, 26, which  
15 would mean I believe we've placed Mr. Shives in a  
16 preliminary estimate of 29.

17 THE COURT: Okay. All right. So, Mr. Shives,  
18 based on your counsel's estimate, you would be a 29, so with  
19 three levels of acceptance, that puts you at 26. If you  
20 were a Criminal History Category I, which he estimates,  
21 you'd be looking at 63 to 78 months.

22 Do you understand that, Mr. Shives?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. All right. Now I want  
25 to -- so you understand, Mr. Shives, additionally, looking

1 at your plea agreement, that there is no agreement about the  
2 criminal history category -- this is in paragraph 18 --  
3 between the government and you? Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: And do you also understand in  
6 paragraph 15, there is no agreement between you and the  
7 government about the sentence or the sentencing range?

8 THE DEFENDANT: Yes.

9 THE COURT: Or even the guidelines, it appears.  
10 Do you understand that, Mr. Shives?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. So you understand that at  
13 sentencing, the government may -- although your attorney  
14 estimates that your guidelines may be 63 to 78 months, the  
15 government may ask for somewhere between 97 to 121 months or  
16 more, they might be asking for something different.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: And do you understand that the court  
20 will determine the criminal history category that applies to  
21 your case after reviewing the presentence report?

22 THE DEFENDANT: Yes.

23 THE COURT: And do you also understand that  
24 sentencing rests with the discretion of the court, and the  
25 federal sentencing law requires the court to impose a

1 sentence which is sufficient, but not greater than  
2 necessary, with the -- but not greater than necessary, and  
3 that the court will consider your sentencing guidelines  
4 range in determining the reasonable sentence?

5 THE DEFENDANT: Yes.

6 THE COURT: And do you understand that the court  
7 will determine your sentencing guidelines imprisonment range  
8 that applies to your case after a presentence report has  
9 been prepared and reviewed?

10 THE DEFENDANT: Yes.

11 THE COURT: And do you understand the court must  
12 also consider the sentencing factors under Title 18 United  
13 States Code Section 3553(a) in determining the sentence?

14 THE DEFENDANT: Yes.

15 THE COURT: And do you understand, Mr. Shives,  
16 that any recommendation, to the extent there -- I guess  
17 there aren't any in this plea agreement, but any  
18 recommendations by your counsel or the government are not  
19 binding on the court and the court may impose any sentence  
20 provided by law?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. And you understand that  
23 the court alone will decide what sentence to impose, whether  
24 there is any basis -- what the guidelines are, whether there  
25 is any basis to depart from that range or to sentence

1 outside of that range?

2 THE DEFENDANT: Yes.

3 THE COURT: And do you understand if the court  
4 sentence -- I'm sorry, the court sentences you to a sentence  
5 different than what your counsel is recommending, you still  
6 will not have the right to withdraw your guilty plea?

7 THE DEFENDANT: Yes.

8 THE COURT: And do you understand that parole has  
9 been abolished, and that if you are sentenced to prison, you  
10 will not be released on parole?

11 THE DEFENDANT: Yes.

12 THE COURT: Having discussed all of that with you,  
13 Mr. Shives, do you still wish to proceed with your guilty  
14 plea?

15 THE DEFENDANT: Yes.

16 THE COURT: All right. All right. I now want to  
17 go down to the portion of your plea agreement, Mr. Shives,  
18 that deals with the factual basis. This starts on page 6 of  
19 your plea agreement. It's paragraph 20. And it continues  
20 onto page 7 of your plea agreement, to paragraph 21.

21 Did you review those paragraphs with your attorney  
22 prior to initialing pages 6 and 7, Mr. Shives?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. And do you agree to --  
25 well, before I get to that, sorry.

1           Mr. Sullivan, is there anything additional the  
2 government wishes to add regarding Mr. Shives' conduct?

3           MR. SULLIVAN: No, thank you, Judge.

4           THE COURT: All right. And, Mr. Kadish, does  
5 Mr. -- is there any objections that you have to the factual  
6 basis as it's listed in this plea agreement?

7           You're on mute. Sorry.

8           MR. KADISH: Sorry about that, Judge.

9           Having reviewed the factual basis with Mr. Shives  
10 on July 1st, it is my understanding that Mr. Shives agrees  
11 that the factual basis contained on pages 6 and 7,  
12 specifically paragraph 20 of the plea agreement, are what  
13 the government would prove.

14           Is that correct, Mr. Shives? We're talking about  
15 the actual facts for the plea.

16           THE DEFENDANT: [Inaudible].

17           MR. KADISH: I'm sorry, I didn't hear your  
18 response, Ethan.

19           THE DEFENDANT: I said yes.

20           MR. KADISH: Okay.

21           THE COURT: Thank you.

22           And, Mr. Shives, are there any facts that you wish  
23 to change about what is in paragraph -- OR paragraph 20 on  
24 pages 6 and 7 of your plea agreement? Is there anything you  
25 wish to change?



1 MR. KADISH: And, Ethan, knowing you don't have it  
2 in front of you, right, you don't have it in front of you,  
3 correct?

4 THE DEFENDANT: No.

5 MR. KADISH: What I can do in case you -- I want  
6 to be completely certain, even though you've already signed  
7 it, that you don't have any changes or adjustments, it can  
8 be read on the record to you right now. Because normally  
9 you would be sitting next to me and I could just let you  
10 look at it. But since we're doing this by Zoom, I am happy  
11 to read it.

12 Would you like me to do that just to verify that  
13 what the government is saying happened is what you now agree  
14 happened?

15 THE DEFENDANT: Yeah, go ahead and read it, I  
16 guess.

17 MR. KADISH: Would Your Honor like me to read it  
18 or would you like to read it?

19 THE COURT: You can read it.

20 MR. KADISH: Okay. Thank you.

21 "Defendant agrees that the following summary  
22 fairly and accurately sets forth defendant's offense conduct  
23 and the factual basis for the guilty plea. Defendant  
24 further agrees that the facts set forth in this summary are  
25 true and could be established beyond a reasonable doubt if

1 the case were to proceed in trial:"

2 Are you listening closely, Ethan?

3 THE DEFENDANT: Yes.

4 MR. KADISH: Okay. "From on or about January  
5 21st, 2016 through on or about January 25th, 2016, in the  
6 Northern District of Ohio, and elsewhere, Defendant Ethan  
7 Shives and David Pece, named but not charged in this count,  
8 did knowingly receive visual depictions of a minor, to wit:  
9 Minor Victim 4, engaged in sexually explicit conduct, as  
10 defined in 18 U.S.C. 2256(2)."

11 That's the code section, Ethan, that defines what  
12 is sexually explicit conduct.

13 Do you understand that?

14 THE DEFENDANT: [Inaudible].

15 MR. KADISH: Okay. "That has been shipped and  
16 transported in and affecting interstate and foreign commerce  
17 by any means, including by computer, and that has been  
18 shipped and transported using any means or facility of  
19 interstate and foreign commerce, all in violation of Title  
20 18 United States Code Sections 2252(a)(2) and 2."

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 MR. KADISH: "From on or about January 21, 2016  
24 through on or about January 25, 2016, Defendant and David  
25 Pece, along with others known and unknown to law

1 enforcement, received video depictions of Minor Victim 4, a  
2 minor female, engaging in sexually explicit conduct, as  
3 defined in 18 U.S.C. 2256(2), on web camera so that  
4 Defendant Pece -- that Defendant and Pece and others could  
5 view and record this sexually explicit conduct."

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 MR. KADISH: Do you agree with that part?

9 THE DEFENDANT: Yes.

10 MR. KADISH: "Specifically, Defendant, Pece and  
11 others visited chat room-based websites including Chateen.  
12 On Chateen, Defendant used the screen name 'Tuck.'"

13 Do you agree with that?

14 THE DEFENDANT: Yes.

15 MR. KADISH: "Once minor victims were lured by  
16 others to Chateen, individuals known and unknown to law  
17 enforcement enticed and attempted to entice the minor  
18 victims to engage in sexual acts and to lasciviously display  
19 their genitals and pubic area via web camera."

20 Do you agree with that?

21 THE DEFENDANT: Yes.

22 MR. KADISH: It doesn't say you specifically tried  
23 to entice them, but that you were receiving those images via  
24 computer.

25 THE DEFENDANT: Yes.

1                   MR. KADISH: Okay. "Specifically, between January  
2 21, 2016 and January 25, 2016, Minor Victim 4 visited a  
3 Chateen chat room occupied by Defendant, Pece and others,  
4 and engaged in sexually explicit conduct on webcam, some of  
5 which defendant recorded."

6                   Do you agree with that?

7                   THE DEFENDANT: Yes.

8                   MR. KADISH: "Defendant Pece was a resident of the  
9 Northern District of Ohio and participated in this activity  
10 from the Northern District of Ohio.

11                   "On April 4th, 2019, Defendant was interviewed by  
12 law enforcement."

13                   Now, that was you and that happened in Maryland.  
14 You remember that, correct?

15                   THE DEFENDANT: Yes.

16                   MR. KADISH: Okay. "Defendant admitted visiting  
17 Chateen. He further admitted to being sexually interested  
18 in children and having viewed child pornography of minors  
19 between the ages of 11 and 13 years old. He additionally  
20 admitted to currently using a different online application  
21 to search for child pornography and viewing underage girls  
22 undress and masturbate while transmitting such activity  
23 using a web camera.

24                   "Subsequently, a search warrant was executed and  
25 Defendant's computer was seized. A forensic examination

1 revealed images and videos of minors engaged in sexually  
2 explicit conduct, including some on Chateen."

3 That is the sum and substance of paragraph 20. Is  
4 there any portion of that that you do not agree is accurate?  
5 Now is your time to say so if you disagree.

6 THE DEFENDANT: [Inaudible].

7 MR. KADISH: I'm sorry?

8 THE DEFENDANT: That's accurate.

9 MR. KADISH: That's accurate? Okay.

10 I believe that he has acknowledged paragraph 20,  
11 sum and substance, to be accurate, Your Honor.

12 THE COURT: Very good. Thank you.

13 Mr. Shives, that conduct that was just described  
14 and that you agreed was accurate, does it correctly depict  
15 your conduct that has alleged the charge that you are  
16 pleading guilty to today?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. Thank you.

19 Counsel, is there any right or procedural  
20 provision that I have failed to account for before receiving  
21 Mr. Shives' guilty plea?

22 MR. SULLIVAN: No, Judge. Thank you.

23 MR. KADISH: No, Your Honor.

24 THE COURT: All right. Thank you.

25 Mr. Shives, I am prepared to receive your plea at

1       this time. Do you have any questions for your counsel or do  
2       you have any questions for me before I ask you what your  
3       plea is?

4               THE DEFENDANT: [Inaudible].

5               THE COURT: Sorry, it cut out. What did you say,  
6       Mr. Shives?

7               THE DEFENDANT: No.

8               THE COURT: All right. Thank you.

9               Mr. Shives, having advised you of your rights,  
10       having found you competent, having found a factual basis for  
11       your plea, how do you plead to Count 5 of the information,  
12       guilty or not guilty?

13              THE DEFENDANT: Guilty.

14              THE COURT: Thank you. Mr. Shives, are you  
15       pleading guilty to the offense charged in Count 5 of the  
16       information because you are, in fact, guilty of the offense  
17       charged?

18              THE DEFENDANT: Yes.

19              THE COURT: Thank you.

20              It is my finding that the defendant, Mr. Shives,  
21       is fully competent and capable of entering an informed plea,  
22       he is aware of the nature of the charges brought against him  
23       and the consequences of his plea, his plea of guilty to  
24       Count 5 of the information or supplemental information in  
25       this case is a knowing and voluntary plea supported by an

1 independent basis in fact containing each of the essential  
2 elements of the offense charged.

3 I therefore recommend that the district judge  
4 approve the plea agreement, accept Mr. Shives' plea and  
5 adjudge him guilty of the offense charged in Count 5 of the  
6 information.

7 Mr. Shives, prior to the time of your sentencing,  
8 the court will enter a presentence investigation report. It  
9 is in your best interest to cooperate with the probation  
10 officer in furnishing information for that report, because  
11 that report will be critical to the court's decision of what  
12 your sentence will be.

13 It will inform the district judge's application of  
14 the 3553(a) factors and the judge's obligation to impose a  
15 sentence that is sufficient, but not greater than necessary.

16 You and your counsel, Mr. Shives, will have the  
17 opportunity to examine that report and comment on it prior  
18 to sentencing and at the time of sentencing.

19 Additionally, if you choose to do so, Mr. Shives,  
20 you will have the right to be reasonably heard at the time  
21 of sentencing, and therefore, can speak if you choose to do  
22 so.

23 Regarding sentencing in this matter, your  
24 sentencing is scheduled for November 30th, 2022 at 12 p.m.  
25 in front of District Judge Lioi.

1           In the meantime, Mr. Shives will be continued to  
2 be remanded to the custody of the United States Marshal  
3 pending that sentencing.

4           Is there anything further on behalf of the  
5 government?

6           MR. SULLIVAN: No, thank you, Judge.

7           THE COURT: Thank you.

8           Anything further on behalf of the defendant,  
9 Mr. Shives?

10          MR. KADISH: No, Your Honor.

11          THE COURT: All right. Thank you, everyone. We  
12 are adjourned. Thank you.

13          (Thereupon, proceedings concluded at 10:57 a.m.)

14                               - - -

15  
16                               C E R T I F I C A T E

17  
18           I certify that the foregoing is a correct transcript,  
19 to the best of my ability, transcribed from a digital audio  
20 recording from the record of proceedings in the  
21 above-entitled matter.

22  
23                               /s/ Mary L. Uphold                   August 22, 2022  
24                               Mary L. Uphold, RDR, CRR           Date